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Docket No.: OGW-0369
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Kazuhiro Shimura

Application No.: 10/538,301

Confirmation No.: 3548

Filed: June 9, 2005

Art Unit: 2855

For: SENSOR DEVICE FOR TIRE

Examiner: A. J. Allen

PETITION UNDER 37 C.F.R. §1.144

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a Petition under 37 C.F.R. §1.144 requesting review of the Restriction Requirement mailed in the above-identified application on August 22, 2006, and timely traversed within the Request for Reconsideration of Restriction Requirement under 37 C.F.R. §1.143 filed on September 7, 2006.

The Restriction Requirement of August 22, 2006 includes a restriction requirement under 35 U.S.C. §121.

In response, an election with traverse of that restriction requirement is found within the Request for Reconsideration of Restriction Requirement under 37 C.F.R. §1.143 filed on September 7, 2006.

Paragraph 1 of the Office Action mailed on October 10, 2006 indicates that claims 1 and 4-9 are withdrawn from consideration as being drawn to a nonelected species.

Accordingly, this petition pursuant to 37 C.F.R. §1.144 is proper. See 37 C.F.R. §1.499.

The above-identified application is an application under 35 U.S.C. §371

The above-identified application was filed under 35 U.S.C. §371 and 37 C.F.R. §§1.494 or 1.495, being based upon international application No. PCT/JP03/15769, having an International filing date of December 10, 2003.

A Letter of Clarification of Article 19 and Preliminary Amendments filed along with the application papers on June 9, 2005 essentially restates the Articles 19 and Preliminary Amendments as it would apply to the English language specification.

Accordingly, M.P.E.P. §1893.03(d) provides that the principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application.

However, the Restriction Requirement of August 22, 2006 has applied the restriction practice set forth pursuant to 35 U.S.C. §121 as the basis for the restriction, but has failed to apply the principles of unity of invention found within M.P.E.P. §1893.03(d) in making this restriction requirement.

Pursuant to M.P.E.P. §1893.03(d), practice and procedures within the U.S. Patent and Trademark Office dictate that when making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group, which the Restriction Requirement of August 22, 2006 has failed to do.

(1) List the different groups of claims:

The Restriction Requirement contends the presence of two species, namely:

Species I: a sensor device that detects tire inside information; and

Species II: a sensor device that detects tire inside information further comprising a control circuit.

The Response filed on September 7, 2006 includes the election *with traverse* of **Species II**, having all claims present readable thereon.

(2) Explain why each group lacks unity with each other group:

M.P.E.P. §1893.03(d) further explains that a group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression “special technical feature” is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art.

Yet, the Restriction Requirement fails to explain why each group lacks unity with each other group in rendering its requirement for restriction.

Therefore, the Restriction Requirement made by the Examiner in the Office Action of August 22, 2006 is improper at least for this reason.

Relief

Applicant requests that the Commissioner exercise his supervisory authority under 37 C.F.R. §1.144 and withdraw this improper Restriction Requirement.

No fee is believed to be required in connection with this petition.

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Dated: January 5, 2007

Respectfully submitted,

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